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for Migration
and Refugees

Unaccompanied Minors in Germany

Reception, return and integration
arrangements

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young refugees have contacts in major cities, people they can turn to or addresses that they have received from relatives, acquaintances or other refugees. More than in small towns, here there are foreign “communities”, with whose networks newly-arrived refugees can forge contacts. Thus it can, for example, be observed that unaccompanied minors from Vietnam come to Berlin with particular frequency, where they sometimes lodge an application for asylum, but then disappear, so that their applications for asylum are formally settled. Iraqi minors, on the other hand, frequently migrate to Munich. Since they are more likely to be able to count on being awarded protection as refugees, the tendency of this group to disappear is less pronounced. Equally, UNAMs also expect to find better opportunities for employment and training in major cities than in more rural regions (cf. Jordan 2000: 26).

3. Entry procedures and initial reception

The processes and procedures that are applied upon the entry into Germany of unaccompanied minors, do not always follow any one precisely prescribed model that remains consistent throughout Germany. Apart from the asylum procedure and some aspects of border control, the reception of UNAMs is a responsibility of the 16 German Länder, which, on their part, delegate certain duties to districts (Landkreise), cities and local communities. Depending on the Federal State in which an unaccompanied minor is apprehended, procedures can therefore differ substantially in relation, for example, to taking UNAMs into care and finding accommodation for them (cf. Cremer 2007: 23). There can also be further differences, depending on whether a minor is detected at one of Germany’s external borders or at an airport, or is apprehended by the police within Germany, or initially remains undetected and later, on a “voluntary” basis, applies to an authority or a facility for young persons.

In the following sections an attempt is made to identify and describe, despite regional variations, the most prevalent procedures and practices in respect of the right of residence.

3.1 Entry into the territory of the Federal Republic

In order to enter the Federal Republic of Germany, it is a fundamental requirement for underage nationals of third countries – just like their adult counterparts – to be in possession of a passport and, in many cases, a visa. The latter must be applied for at a German diplomatic mission in the subject’s country of origin. Unaccompanied minors, however, often do not have any opportunity to apply for a visa. In many countries of origin there is, by reason of crises or acts of war, no functioning administrative framework capable of issuing a valid passport, and the embassies of possible countries for flight are not always accessible or within reach. There is also the additional problem that minors, by reason of their age and their particular situation, do not generally fulfil the preconditions for the issuing of a visa

(the reunification of a family, for example, or work or study). As a result, their entry into the Federal Republic will generally take place on a legally irregular basis, either by air (most frequently via the airport in Frankfurt am Main) or by land or sea. It is common for escape agents (that is, “people smugglers” or “human traffickers”) to be involved.⁹

If a minor who is travelling alone is not able to produce the requisite visa at the time of his or her attempt to enter Germany, then the border authorities (the German Federal Police) are entitled to refuse entry. In these cases, as a matter of principle, there will be no notification of the locally responsible Youth Welfare Office. Likewise, the “third country regulation” contained in the Asylum Procedure Act, which is aimed at preventing entry into Germany from so-called safe third countries, will be applied to UNAMs. If it can be verified that legally irregular migrants or asylum-seekers are attempting to enter Germany via a neighbouring country, then they can be refused entry or forcibly returned to that country, irrespective of their age.

In cases in which unaccompanied minors are discovered by the Federal Police after they have already entered Germany without permission – and therefore can no longer be refused entry at the border – then the Federal Police will, within the framework of their competency, examine the possibility of terminating their residence – that is to say, of “return after illegal entry”. Insofar as a return after illegal entry can be accomplished promptly, the local Youth Welfare Office will as a rule not be informed. Insofar as detention is necessary for the purpose of ensuring the forced return after illegal entry, the Federal Police will apply to the Court with local jurisdiction for this. In such applications the police will draw attention to the fact that the person concerned is underage, and in such cases the court will inform the locally responsible Youth Welfare Office.

In the event that a forced return after illegal entry does not appear to be adequate or necessary, the minor is transferred to the relevant Foreigners’ Authority (Ausländerbehörde) or the responsible Youth Welfare Office (Jugendamt). In the event of the minor being transferred to the Foreigners’ Authority, this authority must inform the Youth Welfare Office. There are also some cases in which minors are handed over directly by the local or Federal Police to residential, care or “clearing house” institutions. In such cases the institution must inform the Youth Welfare Office and the Foreigners’ Authority.

Similarly to the procedure applicable to irregular entry by land, the so-called “airport regulation” is also applied to minors. This regulation means that third-party nationals who are attempting to enter the Federal Territory via an international airport, and who are applying for asylum, have to pass through a fast-tracked asylum procedure in the transit area,

⁹ According to Daniela Duff, it can be assumed that around 90 percent of all UNAMs travel with the help of human traffickers. This does not, however, always mean organised and criminal organisations, but can on occasion also include distant relatives or family acquaintances of the unaccompanied minor in question (cf. Duff 2008: 102).

and are accommodated there for the duration of this procedure.¹⁰ If no application for asylum is lodged, then as far as possible, entry into Germany will be refused. Children under the age of 14 who are seeking asylum, however, should – as opposed to adults – be spared the provisional accommodation within the transit area. In general, entry into Germany – that is, permission to leave the transit area – will be granted.

In order to be able to decide how to proceed in each individual instance, it is necessary to know, or to be able to ascertain, the age of the person attempting to enter Germany on a legally irregular basis. In practice, however, this often turns out to be problematic. Persons who have entered illegally frequently carry no identity papers with them, and very often, according to the Federal Police, make statements concerning their actual age that are transparently untrue. Theoretically, in connection with a subject's entry, it is possible to determine a notional age, thus enabling the person in question to be taken into detention in order to secure his or her forced return. According to § 49 of the Residence Act, the obligation to provide information then rests upon the foreign national. This person has the opportunity to cause further information to be obtained concerning the determination of his or her age – for example, in the form of a radiological examination. The practical implementation of this possibility is not, however, without controversy at the legal level, since there are no legal bases for the notional assumption of a date of birth. Furthermore, judges sometimes refuse applications to take unaccompanied minors into detention, and medical examinations can turn out to be imprecise.

In order to increase the awareness and capabilities of its staff in terms of dealing with unaccompanied minors, the Federal Police carries out centrally-organised seminars and decentrally-organised vocational classes on potential challenges arising from the entry of UNAMs into Germany.

There is, however, as far as the Federal Police or other relevant actors in Germany are concerned, no strategic collaboration with authorities in migrants' countries of origin, with

¹⁰ In the case of asylum-seekers who enter via an airport and who come from a secure country of origin or who cannot identify themselves by means of a valid passport or substitute, it is possible to carry out the asylum procedure even before the decision concerning the subject's entry into Germany, in the transit area of the airport. The significance of this regulation is that foreign nationals whose applications for asylum are seen from the outset to be without any prospect of success can already be refused entry at this stage. They can then, without delay, be returned to the country of their departure or their country of origin, with reference to the duty on the part of the said country to accept the subject back. The asylum procedure, including the accelerated legal proceedings, must however be carried out within a period that will generally amount to 19 days. Should this not be possible, the foreign national must be granted entry into the Federal Republic of Germany for the purpose of the continued conduct of his or her asylum procedure. Asylum-seekers coming by air predominantly make use of the airport in Frankfurt am Main. Because of this, the BAMF has established a permanently-manned branch office at this airport. In addition to Frankfurt, the airport procedure is also carried out at the international airports of Munich, Düsseldorf, Hamburg and Berlin-Schönefeld. UNAMs in recent years, however, have only been subjected to the airport procedure in Frankfurt and Düsseldorf. In Frankfurt, a total of 321 UNAMs have passed through an airport procedure during the years 2004 to 2008. 147 of those UNAMs have subsequently been granted entry into Germany (cf. Deutscher Bundestag 2009b: 4). According to the Residence Act, the operators of the airports are under an obligation to provide site quarters on the airport for the accommodation of foreign nationals who are not in possession of the requisite passport visa. This is up to the execution of the decision taken by the border police concerning the entry into Germany of such individuals. These quarters must guarantee the separate accommodation of men and women, and must also be suitable for families with children and for unaccompanied minors (cf. Bundesministerium des Innern 2008: 144).

the explicit objective of guarding against the legally irregular immigration of unaccompanied minors to Germany – by using so-called “pre-embarkation controls” at airports in the country of origin, for example. One main reason for this lack is the fact that unaccompanied minors often come from politically unstable countries or crisis areas (e.g. Iraq, Afghanistan), with which such a pre-emptive collaboration would be difficult or impossible.

There are no complete statistical records of the number of unaccompanied minors who have, in recent years, been permitted or refused entry into the Federal Republic (cf. Müller 2000: 8-11). In particular, information is lacking concerning 16 and 17-year-olds. The Federal Police only records its findings concerning unaccompanied minors who do not yet have the capacity to act in procedures pertaining to the right of residence – that is, who are under the age of 16.

Figures are, on the other hand, available in relation to unaccompanied minors under the age of 16 who were detected at the borders of the Federal Republic during the years 2003 to 2008. These can be found in Table 1 below. There is no particular tendency that can be recognised in the progress of the overall figure; the number of persons detected fluctuates at a low level – that is, at significantly below 200 unaccompanied minors per year.

Likewise, no clear tendency is apparent in respect of the most important entry routes used by UNAMs entering by land. It is not, for example, possible to conclude that more UNAMs regularly come to the Federal Republic via the neighbouring countries to the East than those who come via the neighbouring countries to the West or to the South. At some borders, there were years during which few minors were apprehended or none at all, only for the number to rise strikingly for other years. For example, while the border with Belgium only saw a total of 11 UNAMs under the age of 16 detected during the years 2003 to 2006, the number picked up in 2007 was 38, and in 2008, 31 persons.

At any one point up to and including 2007, more than half of all detections of UNAMs took place at the international airports of the Federal Republic. The year 2008, in which the predominant number of detections of UNAMs took place at land borders, and for the first time a significant number of unaccompanied minors were apprehended at seaports, represents an exception so far.

Table 1: Detection of unaccompanied minors under the age of 16 on entering Germany during 2003 - 2008 (by border used).

Border to	Year					
	2003	2004	2005	2006	2007	2008
Poland		3			5	2
Czech Republic	33	4	14	1	16	6
Denmark			1			16
Austria						9
France	10	4	9	6	2	4
Luxembourg			1			
Belgium	10	1			38	31
Switzerland	1	1	2		1	
Netherlands	7	8	5	3	8	14
Airports	101	95	104	65	72	74
Seaports		2		1	1	18
Total	162	118	136	76	143	174

Source: German Federal Police

Table 2 sets out, for each of the years 2003 to 2008, the ten respective principal countries of origin of UNAMs apprehended while entering Germany. The row labelled “All countries of origin” covers all the countries of origin, not just the ten principal countries of origin itemised individually. In 2007 and 2008, Afghanistan was the most frequent country of origin, and Turkey for the years 2004 to 2006. In 2003, China was the most frequent. Further important countries of origin, taking all the years together, were the Russian Federation, Vietnam, Serbia (and Montenegro) and – with reservations – Nigeria. UNAMs from Iraq did not make their appearance in significant numbers until 2008.

In addition, another factor that emerges from Table 2 is the number of UNAMs apprehended who declared to the Federal Police their desire to lodge an application for asylum, and what decision the Federal Police reached concerning how each respective person was to be dealt with. The majority of “foreign nationals travelling alone” either could be handed over to individuals collecting them, were entrusted to the custody of a Youth Welfare Office, were refused entry directly on the border or were forcibly returned after illegal entry.¹¹ In 2007 and 2008, “Handed over to Youth Welfare Office” was the most common decision, while in the years 2003 to 2006, the predominant decision was “Handed over to person collecting”.

¹¹ Being refused entry (Zurückweisung) means that a foreign national is refused entry on the border before being able to enter German territory. Return after illegal entry (Zurückschiebung), by contrast, is a measure for terminating the subject’s residence, as is removal (Abschiebung) – in other words, return after illegal entry presupposes that the subject’s entry into Germany has, initially, been successful. Unlike removal, however, return after illegal entry is permitted only in the first six months following entry into Germany. Return after illegal entry will, as a rule, be to the country via which entry took place, while removal will usually be to the subject’s home country.

No record is kept by the Federal Police of unaccompanied minors broken down by gender. In addition, minors who return voluntarily prior to a decision by the border authorities concerning their entry are also not registered.

Table 2: Unaccompanied minors under the age of 16 apprehended while entering at the German borders during 2003 - 2008 (divided according to the ten most important respective countries of origin)

2008	Decisions taken upon entry (at land and sea borders and airports, divided according to the 10 most important countries of origin)				
	Number (asylum-seekers among these)	Handed over to person collecting	Handed over to Youth Welfare Office	Refused entry	Return after illegal entry
Afghanistan	79 (25)		70	1	8
Iraq	11 (3)		9		2
Turkey	10 (1)	8	1	1	
Nigeria	7 (6)		5	2	
Somalia	6 (6)		6		
Syria	5 (4)		2	3	
Brazil	4	4			
China	4 (2)	2	2		
Guinea	4 (4)		4		
Sri Lanka	4 (4)		4		
All countries of origin	174 (67)	24	125	8	12

2007	Decisions taken upon entry (at land and sea borders and airports, divided according to the 10 most important countries of origin)				
	Number (asylum-seekers among these)	Handed over to person collecting	Handed over to Youth Welfare Office	Refused entry	Return after illegal entry
Afghanistan	41 (7)		39		2
Vietnam	19 (1)	4	8		7
China	9 (2)	7	2	1	
Turkey	8	6	2		
Russian Federation	7	5	1	1	
Eritrea	5 (2)	1	2		
Nigeria	4 (1)	3	1		
Thailand	4	3		1	
Iraq	3 (2)		2		1
Israel	3	3			
All countries of origin	143 (25)	51	73	5	12

2006	Decisions taken upon entry (at land and sea borders and airports, divided according to the 10 most important countries of origin)				
	Number (asylum-seekers among these)	Handed over to person collecting	Handed over to Youth Welfare Office	Refused entry	Return after illegal entry
Turkey	17	14		3	
Serbia and Montenegro	6	4			2
Vietnam	6 (4)		5		
Brazil	5	1	1	2	
China	5 (2)		2	3	
Russian Federation	4	4			
Afghanistan	3 (2)		2		1
D.R. Congo	3 (3)		3		
Ghana	2	2			
India	2 (1)	1	1		
All countries of origin	76 (18)	35	21	11	3

2005	Decisions taken upon entry (at land and sea borders and airports, divided according to the 10 most important countries of origin)				
	Number (asylum-seekers among these)	Handed over to person collecting	Handed over to Youth Welfare Office	Refused entry	Return after illegal entry
Turkey	41 (1)	40	1		
Serbia and Montenegro	11	10		1	
Russian Federation	10 (2)	9			1
Vietnam	6		1		5
Belarus	6 (5)	5			1
Ghana	5	5			
Afghanistan	4 (1)		2		2
Somalia	3 (3)		3		
South Africa	3	3			
Algeria	2 (1)		1		1
All countries of origin	136 (26)	88	28	4	16

2004	Decisions taken upon entry (at land and sea borders and airports, divided according to the 10 most important countries of origin)				
	Number (asylum-seekers among these)	Handed over to person collecting	Handed over to Youth Welfare Office	Refused entry	Return after illegal entry
Turkey	32	30		2	
Afghanistan	10 (9)	1	9		
Nigeria	9 (4)	3	4	2	
Somalia	9 (9)		9		
China	8 (3)	1	5		2
Ethiopia	4 (4)		4		
D.R. Congo	4 (4)		4		
Dominican Republik	3	3			
Ghana	3	3			
Sri Lanka	3 (2)	2	1		
All countries of origin	118 (48)	59	50	7	2

2003	Decisions taken upon entry (at land and sea borders and airports, divided according to the 10 most important countries of origin)				
	Number (asylum-seekers among these)	Handed over to person collecting	Handed over to Youth Welfare Office	Refused entry	Return after illegal entry
China	26 (3)	1	1	3	21
Russian Federation	20	20			
Turkey	14 (2)	12	2		
Afghanistan	13 (12)		13		
Serbia and Montenegro	11	9	2		
Ethiopia	6 (5)	1	5		
Somalia	6 (6)		6		
Vietnam	6	1	2		3
India	5 (1)		1		4
Belarus	5	5			
All countries of origin	162 (50)	68	55	7	32

Source: German Federal Police

As regards unaccompanied minors who enter the Federal Republic in a legally irregular manner, and who are therefore apprehended not on the border by the Federal Police but by a Regional Police force once they are already inside Germany, there are no annual statistics available along the lines of Tables 1 and 2.

The sole indications are those that emerge from the answer of the Federal Government to a parliamentary enquiry of 20 September 2006. According to this, between 01 October 2005 and 30 June 2006, a total of 75 unaccompanied minors were detected inside Germany. 41 of these were under the age of 16, 34 were aged 16 or 17. 16 of the UNAMs detected were girls and 59 were boys (cf. Deutscher Bundestag 2006: 2).

The Police Crime Statistics (PKS) show that in 2007, a total of 1,550 foreign minors were detected after having entered German territory on an irregular basis. Of those minors, 1,062 were boys and 488 were girls. The Statistics do not reveal, however, whether those minors, or how many of them, were in company of their parents or legal representatives or unaccompanied.

3.2 Taking into care, determination of age and clearing procedure

Unaccompanied minors who are not immediately refused entry or returned after having entered Germany illegally, and who have within Germany no persons entitled to have care and custody of them and no legal guardians, are, following their arrival and/or their initial apprehension inside Germany, handed over to the respective Youth Welfare Office (Jugendamt) with responsibility in that locality. If UNAMs themselves come forward to the BAMF, to a Foreigners' Authority or to some other public institution, then this body should notify the Youth Welfare Office.

The Youth Welfare Office is, according to § 42 of book VIII of the German Code of Social Law (Sozialgesetzbuch VIII, SGB VIII), responsible for taking the children or youths

concerned “into care”.¹² This regulation is a short-term protective measure and includes the authority to place a child or a young person provisionally in accommodation with a suitable individual, in a suitable institution or in some other form of adequate accommodation. Equally, “the appointment of a legal guardian or carer shall be arranged without delay”. For these purposes, a Family Court or Guardianship Court must be applied to for a decision concerning custody of the child.¹³

Directly following the taking into care of the subject, a clarification or “clearing procedure” is carried out. This is a matter of getting to the bottom of what circumstances have led to the child being taken into care and to what extent youth welfare needs to be granted – i.e. which potential measures would be in the interest of the respective unaccompanied minor and/or which measures would endanger the best interests of the child (cf. *Arbeitswohlfahrt* 2008: 5). In the context of the “clearing process”, the structure of which can vary in accordance with the Federal State and locality and which lasts a varying amount of time¹⁴, it is possible to undertake an assessment of age in the case of a young person whose age is unclear. In addition, further personal data, information concerning family members in Germany, in Europe and in the subject’s home country and the reason for the migration of the child and/or the young person are asked for and determined. The legal guardian appointed by the court will decide, following an initial discussion with the young person, whether an application for asylum should be lodged with the BAMF.¹⁵

In some places in the Federal Republic, the clearing procedure is carried out directly by the Youth Welfare Office, while in others it takes place in special “clearing houses”, in which – at least provisionally – UNAMs are also able to find accommodation. These will often be fixed communal homes with ten to 15 places and qualified specialist staff to look after the children and youths. The clearing houses are intended to ensure suitable care and accommodation for young persons, including their placement on language courses and in schools. For a further clarification of the process of taking into care and the clearing process, Section 3.3 contains a more detailed description of a concrete case study from Nuremberg.

The process of taking into care and the appointment of a legal guardian in accordance with § 42 SGB VIII was reformed with the coming into force of the Law for the Further Development of Child and Youth Welfare (*Gesetz zur Weiterentwicklung der Kinder- und Jugendhilfe, KICK*) on 1 October 2005. Whereas, according to the previous legal position, it

12 “The Youth Welfare Office is both entitled and obliged to take a child or a young person into its care if (...) a foreign child or a foreign young person shall come to Germany unaccompanied and there shall be neither persons entitled to care for the said child or young person nor legal guardians resident within the country.” (§ 42, Paragraph 1 of the SGB VIII)

13 This procedure is in accordance with Article 19 (1) of Council Directive 2003/9/EC of 27 January 2003, laying down minimum standards for the reception of asylum-seekers within the Member States (the “Reception Directive”).

14 The duration of the “clearing procedure” can range from a few days to three months.

15 The appointment of a legal guardian by a Guardianship Court / Family court does not necessarily occur within a certain timeframe. In some Länder, guardianship for unaccompanied minors is usually arranged within few days. In other Federal States, where the appointment of a guardian can take longer, preliminary guardianship measures may be taken until a permanent solution is reached. According to the law, legal guardianship for minors can be assigned to one person, several persons, Youth Welfare Offices or civil society associations.

was only possible for unaccompanied minors to be taken into care if there was an individual danger to the best interests of the child in question, under the new law (§ 42, Paragraph 1, No. 3 of the SGB VIII) the unaccompanied entry into Germany of minors under the age of 18 is in itself laid down as a criterion for taking into care. There is no longer any need for an appraisal of the individual danger; likewise, there is no differentiation between UNAMs under the age of 16 and 16 and 17-year-olds. Instead, an unaccompanied minor under the age of 18 is, by definition, assumed to be in a situation that would trigger the process of taking into care (cf. Deutscher Bundestag 2006: 1).

Several experts, however, make the criticism that on a Länder or local authority level, the amended version of the SGB VIII is not sufficiently observed everywhere in relation to UNAMs. Thus, the Federal Association for Unaccompanied Minor Refugees (B-UMF) complained in April 2008 that quite a few local authorities were not ordering that UNAMs who are lodging an application for asylum be taken into care, on the grounds that under the Asylum Procedure Act (Asylverfahrensgesetz), unaccompanied minors have the legal capacity to act (cf. Deutscher Bundestag 2008d: 4). Furthermore, the criticism has also been raised that the Youth Welfare Offices were from time to time failing to take young persons under the age of 16 into care and failing to appoint any legal guardians, not least for economic or financial reasons (cf. Jockenhövel-Schiecke 2006: 87-4). In Cremer (2007) we read that the Youth Welfare Offices and the official legal guardians of young persons do not always perform their function of taking a subject into care in accordance with the SGB VIII, or dismiss a need for education on the part of minors, and thus also the need to accommodate them under SGB VIII (cf. Cremer 2007: 23).

According to this, the legal capacity of 16 and 17-year-olds to act, as determined in the Residence Act (Aufenthaltsgesetz) and the Asylum Procedure Act, is interpreted in such a way that UNAMs within this age bracket who lodge an application for asylum can be placed in accommodation for (adult) asylum-seekers and – as described in Section 3.5 – distributed inside Germany, provided the Youth Welfare Office does not ascertain that there is any particular need for youth welfare and does not order accommodation in a youth welfare institution. In the opinion of the Federal Government, this practice is not questionable, since § 42 of the SGB VIII does not constitute any exception to the regulations under the laws relating to asylum and foreign nationals (cf. Deutscher Bundestag 2006: 2). Critics, however, consider it to be unlawful to accord precedence in practice to the regulations of the Asylum Procedure Act, in accordance with which foreign nationals who lodge an application for asylum must live in an institution for reception of (adult) asylum-seekers that must be kept in readiness for this purpose by the respective Federal State, over the provisions of the SGB VIII (cf. Cremer 2006: 68-69). Some problematic issues which have been raised by critics can also be the result of the fact that the regulations concerning the taking into care on the basis of § 42 of the SGB VIII are binding to the Youth Welfare Offices, while there is no legal obligation for other institutions or authorities to report the arrival of an unaccompanied minor in Germany to Youth Welfare Office officials.

In addition, there have been plenty of criticisms of the procedure for establishing the age of UNAMs made by organisations giving assistance to refugees and experts (cf. Cremer 2007: 25). In cases in which unaccompanied minors do not state their age or are not able

to prove it, or if the authorities have doubts about the asserted minority of a young person, then employees of the local Youth Welfare Offices, of the clearing houses or even of the local Foreigners' Authorities will perform an estimation of the age of the subject by means of a visual inspection. In respect of this, the children and/or youths have the right to refute the authorities' estimation of their age by means of suitable documents or medical certificates. There are, however, very few centralised records as regards whether, and to what extent, any measures going beyond the visual inspection (such as X-ray examinations of the carpus or visual inspection of the teeth) are, in individual instances, set in motion. Such measures are in principle possible in accordance with § 49, Paragraph 6 of the Residence Act. However, they are considered by human rights organisations to be humiliating or an intrusion upon the physical integrity of the children or youths (cf. Cremer 2007: 25).

If an application for asylum is lodged, either by the legal guardian or by the minor himself or herself, generally following the end of the clearing procedure, the BAMF is responsible for establishing the legal capacity to act (and thus also the age) of the minor in question in respect of the asylum. In this case, a responsible official from the BAMF who has been trained to deal with unaccompanied minors will perform an estimation of the subject's age. A second person must be called in for this. The BAMF will not itself cause any medical certificates to be drawn up, but any documentation that is already available from the Länder authorities should be included in the estimation process. Allowance is made for the particular protection enjoyed by minors to the extent that in the event of any doubt there will be a presumption in favour of the person concerned that this person has not yet reached the age of 16. As a result, it should be assumed that the subject was born on the last possible date (31.12.) of the presumed year of birth. If the responsible official comes to believe that the young person has not yet reached the age of 16, the application for asylum by the person concerned will be considered to be "provisionally invalid", and the institution for reception will be notified of the need for a legal guardian to be appointed. The application for asylum will not become valid until approved by the legal guardian.

Young persons who lodge an application for asylum are, from the age of 14, photographed and fingerprinted by the BAMF. If no application for asylum is lodged but a procedure under the law relating to residence is carried out with a Foreigners' Authority, then this Authority must make sure that the subject is photographed and fingerprinted. In the course of this procedure, the fingerprints of the minor in question will also be compared with the "Eurodac Register" – thus making it possible to test whether the minor has already lodged an application for asylum in any other Member State and – if applicable – can be transferred to this Member State within the framework of the so-called "Dublin Procedure".

Once the clearing procedure has been concluded, unaccompanied minors are found accommodation with a suitable person, in an institution for children or young persons or some other form of supervised accommodation. In some Federal States, there is regularly the additional possibility of accommodation within institutions for reception designated for adult asylum-seekers.¹⁶ Some of these reception centres have special areas or neighbour-

¹⁶ This is permissible in accordance with Article 19 (2) of the "Reception Directive" (2003/9/EC).

ing buildings intended to provide suitable accommodation and provisions for young persons. In the case of child refugees under the age of 14, accommodation with foster families is also possible. These can include both relatives and other families who are given permission by the legal guardian to take the child in.

The range of different forms of accommodation for UNAMs is broad, as is the range of forms of social and educational care available. There are differences between the individual Länder, but also within the Länder, districts (Landkreise) and towns.

3.3 Case study: the clearing procedure in Nuremberg

During the course of this study, a residential care project for unaccompanied child refugees in Nuremberg was visited. This institution, which is supported by a private association under the umbrella of the Parity Welfare Association (Paritätischer Wohlfahrtsverband), an association of social movements in Germany, provides care for unaccompanied minors in accordance with § 42 of the SGB VIII and help with their upbringing and education in accordance with § 27 of the SGB VIII and § 34 of the SGB VIII (residential care). A block of flats in East Nuremberg, which is run by the institution, offers facilities for up to 12 children, including single bedrooms, double bedrooms and recreation rooms.

Three of the 12 places are “clearing places” (see Section 3.2) for unaccompanied minors. If an unaccompanied minor is apprehended in Nuremberg by the police, they will take him or her either to the Municipal Child Welfare Centre or directly to the residential care project for child refugees, which will then regulate the taking into care of the child. With the help of an interpreter, a conversation for the purpose of admission will take place, following which the Youth Welfare Office and the Foreigners’ Authority will be informed. The child or young person will be allocated a room, issued with preliminary identification by the residential project and then assigned to a German course that takes place on the premises. In addition, the local Authority for Education will be informed so that the child’s enrolment at school can be organised, and a health insurance certificate will be applied for.

Following this, an initial set of clothing and equipment is purchased for the child and a medical examination of the child or young person is organised with the Health Authority of the City of Nuremberg. In terms of the initial clothing and equipment, the Youth Welfare Office reimburses 126 euros per UNAM for clothing, together with 52 euros for school supplies and 52 euros for a dictionary. Shortly after the beginning of the clearing procedure, a detailed “clearing discussion” is held with the unaccompanied minor. This discussion contains a total of 25 questions, touching on such matters as the subject’s language ability, nationality, the existence and availability of personal documents such as a passport, relatives in the subject’s country of origin or in other countries, and the subject’s educational attainments or school attendance. The results of this list of questions are communicated to the Foreigners’ Authority, who will then in general decide on a suspension of removal and issue an exceptional leave to remain (Duldung). Also included in the clearing procedure are further discussions, the appointment of a legal guardian by the Youth Welfare Office, further medical examinations by medical specialists and the clarification of the question of whether an application for asylum is to be lodged with the BAMF. A further important component of this process is establishing the need for education of the UNAMs.

In addition, non-governmental organisations are also involved in the reception of unaccompanied minors locally in German cities and communities. Residential homes for young foreign nationals are frequently operated by such organisations as the Workers' Welfare Association (Arbeiterwohlfahrt), the Caritas Association, the Charitable Organisation of the Protestant Church (Diakonisches Werk), or by non-profit organisations belonging to one of the charitable umbrella associations.

The International Organisation for Migration (IOM) is involved in the organisation of the voluntary return of unaccompanied minors via the REAG and GARP programmes (see Section 5.1).

4. Reception arrangements, the asylum procedure and integration measures

4.1 The asylum procedure and procedures relating to the right of residence

In respect of the reception of unaccompanied minors and their status, a distinction must be drawn between children and young persons who apply for asylum and those who do not. Whereas earlier, an application for asylum with the BAMF was considered the only way to obtain a provisional right of residence in Germany (for the duration of the asylum procedure), these days social services and non-governmental organisations who concern themselves with unaccompanied minors sometimes advise against an application for asylum because minors often have difficulty asserting reasons for asylum or putting them forward in a comprehensible manner. Likewise, bearing in mind the best interests of the child, the BAMF too proceeds on the assumption that it can make sense in many cases to spare minors the stressful situation of an asylum procedure that may possibly be unsuccessful. Even without making an application for asylum, minors can attempt to claim a prohibition on deportation and thus – provisionally at least – to remain in Germany. In such a case, the responsible body is not the BAMF but the relevant Foreigners' Authority. In Nuremberg, where the situation was examined somewhat more closely as a case study, the Foreigners' Authority, following a consultation with the institution where the "clearing procedure" is carried out, generally issues minors with an exceptional leave to remain (Duldung) even before a decision is taken as to whether an application for asylum will be lodged or an application made to the Foreigners' Authority for protection from deportation.

The aim of this chapter is to provide a description of both the asylum procedure and the procedure relating to the right of residence, together with their respective particular features in respect of unaccompanied minors.

4.1.1 EU guidelines for dealing with unaccompanied minors

By now, policies in Germany relating to asylum and refugees, and thus also how unaccompanied minors are dealt with, have come under the influence of European legislation.

Following the coming into force on 1 January 2005 of the German Immigration Act (*Zuwanderungsgesetz*), which already introduced striking changes in the consideration to be given to non-governmental parties involved in persecution when examining the recognition of refugees, the implementation of Council Directive 2004/83/EC of 29 April 2004 (the “Qualification Directive”) into national law marked a significant step in the direction of a common asylum system in Europe. Furthermore, the recognition of an entitlement to asylum under national law and protection granted to a refugee as envisaged by the Geneva Convention on Refugees were brought into line with each other in respect of their consequences in terms of the subject’s status and right of residence. Both methods of granting protection have in common that political persecution must be present. The scope of application for protection for refugees is, however, expanded. It is now possible for the preconditions for this to be fulfilled even if a claim for (national) asylum is, despite the presence of impending political persecution, rejected – because, for example, the subject has entered Germany via a secure third-party state or is in some other manner safe from persecution. Likewise, the regulation dealing with persecution by non-governmental parties or for religious reasons is more comprehensive (see 4.1.3). Alongside recognition of an entitlement to asylum and the awarding of protection as a refugee, it is also possible that nationals of third countries are given the opportunity to gain legitimate residence in Germany under the umbrella of “subsidiary protection” (for details, see Sections 4.1.3 and 4.2).

In respect of the protection of unaccompanied minors, Article 17 (6) of Council Directive 2005/85/EC of 1 December 2005 (the “Procedure Directive”) contains a catalogue of measures to be taken (“Guarantees for unaccompanied minors”), designed to ensure that the Member States, when dealing with asylum applications, take into consideration the particular requirements of unaccompanied underage refugees and the best interests of the child. The provisions of the Directive relate, inter alia, to the nomination of a legal representative, to the duty of the relevant asylum authorities to make sure that the interviewing of the minor is carried out by public servants who are familiar with the particular requirements of minors, and to the possibility of causing medical examinations to be carried out for the purposes of determining the age of the minors concerned.¹⁸ German law complies with these specifications by means of regulations contained in the Asylum Procedure Act (*Asylverfahrensgesetz*), the Residence Act (*Aufenthaltsgesetz*), the Code of Social Law (*SGB VIII*) and the practices of the BAMF of providing further training for officials responsible for dealing with asylum, making them “asylum officials with special responsibilities” in terms of dealing with UNAMs and of permitting the attendance of legal guardians at asylum hearings for unaccompanied minors.

4.1.2 The appointment of a representative and the legal capacity to act

According to Article 17 (1) (a) of the Procedure Directive, the Member States should, as soon as possible, take measures to ensure that a guardian is appointed to represent and assist the unaccompanied minor with respect to the examination of his or her application for asylum. German law complies with this requirement by determining that in respect of asylum-seekers who have not yet reached the age of 16, a legal guardian must be appointed

¹⁸ Cf. Article 17 of Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.

whose responsibilities include dealing with the proceedings necessary for the implementation of the asylum procedure.

According to § 42 of the SGB VIII, a legal guardian must also be appointed for 16 and 17-year-old UNAMs. As already mentioned in the introduction, however, Article 17 (3) of the Procedure Directive makes it permissible – to the extent that 16 and 17-year-olds can be considered to have the legal capacity to act in asylum procedures – to depart from the guarantees for unaccompanied minors contained in the Directive.¹⁹ Germany is thus in a position to retain the regulation contained in § 12, Paragraph 1 of the Asylum Procedure Act, the existence of which predates the coming into force of the EU Directive in question. This regulation defines the beginning of the legal capacity to act of a minor as coming at the time of the completion of his or her 16th year of life, irrespective of whether a legal guardian has been appointed or not. This applies not only to the asylum procedure, but also to any possible administrative proceedings in relation to the right of residence implemented with local Foreigners' Authorities (§ 80, Paragraph 1 of the Residence Act).

4.1.3 “Dublin Procedures” and asylum procedures at the the BAMF

During the course of the asylum procedure, the existence of political persecution, the requirements for the granting of protection as a refugee and the existence of any prohibitions on deportation will be examined. For these purposes, the BAMF will clarify the circumstances and collect the necessary evidence.

According to Article 16 a, Paragraph 1 of the German Basic Constitutional Law, victims of political persecution are entitled in the Federal Republic of Germany to be recognised as persons entitled to asylum. The definition and construction of this fundamental right are subject solely to the legislation and judicature of the Federal Republic of Germany; the regulations in the Qualification Directive have no applicability here.

The existence of the requirements for recognition as a refugee is examined in accordance with § 3, Paragraph 1 of the Asylum Procedure Act, on the basis of § 60, Paragraph 1 of the Residence Act. This regulation replaced § 51, Paragraph 1 of the German Aliens Act (Ausländergesetz), which had previously been applicable, in 2005. However, as before, the regulation describes the domestic norm for the implementation of the Geneva Convention on Refugees – but now, its construction is oriented towards the Qualification Directive.

If it is not possible for a subject to be recognised as a political refugee in accordance with Article 16 a, Paragraph 1 of the Basic Constitutional Law or as a refugee in accordance with the Geneva Convention on Refugees, it is still possible for a prohibition on deportation to arise out of the fact that in the destination country of a deportation, the party concerned comes under the threat of serious harm or other serious dangers to freedom, life and limb as defined under national law. Protection from these dangers is designated as subsidiary protection. The requirements for this are regulated in German law in § 60, Paragraphs 2, 3,

¹⁹ “Member States may, in accordance with the laws and regulations in force on 1 December 2005, also refrain from appointing a representative where the unaccompanied minor is 16 years old or older, unless he/she is unable to pursue his/her application without a representative.”

5, 7, Clause 1 and Paragraph 7, Clause 2 of the Residence Act. Under European law, they are derived from Article 15 of the Qualification Directive.

According to § 13 of the Asylum Procedure Act, every application for asylum also contains, by implication, a request that a check be run for protection as a refugee in accordance with the Geneva Convention on Refugees and/or any existing prohibitions on deportation in accordance with § 60, Paragraphs 2 to 7 of the Residence Act. Therefore, during any asylum procedure, a check is automatically run on whether the asylum-seeker will be receiving a provisional right of residence even if the application for asylum (or refugee status) is turned down (protection from deportation).

When an unaccompanied minor lodges an application for asylum, either in person or through his or her legal guardian, first of all a written application has to be presented to the BAMF. The BAMF will then start by checking, in the context of the “Dublin Procedure”, whether Germany or another member state is responsible for examining the application for asylum.

The “Dublin Procedure” is a procedure that has been integrated into the national asylum procedure for the purpose of determining the country that is responsible for examining an application for asylum. It is also performed in the case of underage asylum-seekers. The basis for this is Council Regulation (EC) No. 343/2003 of 18 February 2003 (the “Dublin II Regulation”). It came into force on 17 March 2003, and is a directly enforceable law within the Member States. The Regulation is intended to guarantee that an asylum procedure will be carried out for each asylum-seeker in one of the Member States, while simultaneously avoiding the implementation of more than one asylum procedure within the territories covered by the Dublin II Regulation. Before the substance of an application for asylum lodged in Germany – and this also includes repeat applications – clarification in accordance with the Dublin II Regulation is needed as to whether or not any criteria are present for the responsibility of another Member State. These criteria are described in Articles 6 to 14 and have to be applied in a specific order.

First of all, the Member States have to examine whether the applicant is an unaccompanied minor. An unaccompanied minor as defined in the Dublin II Regulation is an unmarried person aged under 18 who either enters a Member State without being accompanied by a responsible adult, or is left without such accompaniment following his or her entry. As regards the examination of applications for asylum lodged by unaccompanied minors, responsibility rests with the Member State in which a member of the family (father, mother or legal guardian) is staying legitimately, provided that a transfer of the minor to this person would be in the interests of the minor. The inverse is also true: Germany can be under an obligation to take on a UNAM from another Member State if a member of the family is staying here legitimately. If no member of the family is present within the territories covered by the Dublin II Regulation, then responsibility rests with the Member State in which the initial application for asylum was lodged.

In the case of all decisions that affect minors, particular attention should be paid to the best interests of the child. In March 2007, the internal BAMF instructions on asylum un-

der the heading “Minors within the Dublin Procedure” (Minderjährige im Dublinverfahren) were updated in order to raise the awareness and sensitivity of the officials responsible for the asylum process in respect of minors, and in particular those who already have the legal capacity to act in proceedings.

If, following the Dublin examination, it is confirmed that responsibility rests with Germany, then the BAMF will, within the framework of the asylum procedure, arrange an interview of the applicant in a relevant branch office of the Federal Office. The BAMF has 22 such branch offices across Germany in which applications for asylum can be examined. They specialise in specific countries of origin. In each branch office, “asylum officials with special responsibilities” have been appointed, each with special training in dealing with unaccompanied underage applicants for asylum (see Section 3.2). This puts Germany in compliance with Article 17 (4) (a) of the Procedure Directive, which dictates that Member States must ensure that the personal interview of an unaccompanied underage applicant for asylum is conducted by a person who has the necessary knowledge of the special needs of minors.

The functions of this asylum official with special responsibilities include providing information to his or her colleagues and superiors in the respective branch office, advising colleagues in difficult individual cases, interviewing unaccompanied underage applicants for asylum and handling their cases. The training for employees whose special function is dealing with unaccompanied minors includes, among others, the following elements:

- Culture-specific knowledge;
- Identifying minors who are under extreme strain;
- The possible consequences of traumatic experiences upon minors;
- Structuring the interview in a manner suitable for children and/or youths;
- The interview situation from a medical perspective.

Interviews with underage applicants for asylum are conducted in a less formal manner than those involving adult asylum-seekers, and the responsible officials are obliged to be particularly sensitive and responsive to the specific needs of minors. The guarantees for minors contained in the Procedure Directive are further complied with by the BAMF to the extent that the legal guardian of the minor is given the opportunity to be present at the interview despite the legal capacity to act of 16 and 17-year-olds. Likewise, the decisions of the BAMF are delivered not only to the minors themselves but also to the legal guardians. In the event of any doubts concerning the age of an unaccompanied applicant for asylum, the asylum officials with special responsibilities may undertake an assessment of the subject’s age (see 3.2). This will be carried out in accordance with Article 17 (5) of the Procedure Directive.

In respect of the examination of reasons for asylum (Article 16 a of the Basic Constitutional Law), protection as a refugee (§ 60, Paragraph 1 of the Residence Act) and prohibitions on deportation (§ 60, Paragraphs 2, 3, 5 and 7 of the Residence Act), the same criteria and requirements apply to unaccompanied minors as apply to adult applicants. Of particular significance in respect of underage refugees, however, is the prohibition on deportation in accordance with § 60, Paragraph 7 of the Residence Act if they have no relatives in their home country to care for them, or if, in the event of their returning, there is cause for

concern that because of the lack of suitable protective institutions (orphanages, charitable institutions etc.), the subject will be running the risk of starvation or of a life at the margin of existence, leading to extreme danger to life and limb.

Table 4 contains information concerning the ten principal countries of origin of unaccompanied minors having applied for asylum in 2008. 2008 was the first year in which all UNAMs seeking asylum – that is, including 16 and 17-year-olds – were recorded on a statistical level. Far and away the largest group of UNAMs in 2008 came from Iraq (228), followed by Vietnam (68) and Afghanistan (61). Overall, a total of 763 UNAMs lodged applications for asylum in Germany. Out of these, 324 were younger than 16, and 439 were 16 or 17 years old.

Table 4: Unaccompanied underage applicants making first-time applications for asylum in 2008 (the ten most important countries of origin)

Country of origin	Number of UNAM applicants for asylum up to and including the age of 15	Number of UNAM applicants for asylum aged 16 and 17	Total number of unaccompanied underage asylum-seekers
Iraq	93	135	228
Vietnam	8	60	68
Afghanistan	27	34	61
Guinea	29	19	48
Ethiopia	18	18	36
Eritrea	15	8	23
India	8	12	20
Russian Federation	5	13	18
Algeria	6	11	17
Sri Lanka	11	5	16
Total (all countries of origin)	324	439	763

Source: BAMF

Table 5 provides an overview of the number of applications for asylum lodged by UNAMs during the years 2001 to 2008. When analysing this table, it should be borne in mind that up to and including 2007, only unaccompanied minors up to the age of 15 were recorded separately in the asylum statistics. It is true that the annual asylum statistics kept by the BAMF up to and including 2007 also contain the number of applicants aged 16 and 17 for each respective year; however, they do not shed any light on how many 16 and 17-year-olds came into Germany unaccompanied or in the company of parents or other legal guardians.

It is however discernible that the number of applications for asylum from unaccompanied minors up to and including the age of 15 has been declining year by year since 2004. Sharp downturns have been documented – by almost 50 percent, for example, between 2004 and 2005. Not until 2008 was an increase registered once more. In this respect, the changes in the numbers of applications for asylum from UNAMs correspond to the general tendency in the numbers of applications for asylum in Germany. A virtually unbroken decline has been observed since 1993, which can be attributed to such factors as changes to

the laws relating to aliens and asylum-seekers in 1993, the stabilisation of the countries in Eastern Europe, the end of the warfare in the former Yugoslavia or political reforms in Turkey (cf. Bundesministerium des Innern / BAMF 2008: 99-100). Likewise, the enlargement of the EU and the accompanying eastward displacement of the external border of the EU will also have played their part.

Table 5: Unaccompanied underage applicants making first-time applications for asylum in 2001 – 2008 (all countries of origin)

Year	UNAM applicants for asylum up to and including the age of 15	UNAM applicants for asylum aged 16 and 17	Total number of UNAM applicants for asylum
2001	1,075	-	-
2002	873	-	-
2003	977	-	-
2004	636	-	-
2005	331	-	-
2006	186	-	-
2007	180	-	-
2008	324	439	763

Source: BAMF

Table 6 shows how the number of applications for asylum by unaccompanied minors has developed during the years from 2002 – 2008, itemised according to the ten most important countries of origin for each year, the gender of the applicants and age groups (0 – 13 and 14 – 15).

It is discernible here that for almost every country of origin, the number of male asylum-seekers is significantly higher than the number of female ones. Ethiopia, however, constitutes a striking exception. During each of the years from 2002 to 2008, significantly more unaccompanied girls from Ethiopia lodged applications for asylum than boys. Girls coming from this country to Germany frequently assert that they have been under threat of, or have already suffered, gender-specific forms of persecution such as female genital mutilation.

In the case of other African countries of origin (Eritrea, Kenya, Nigeria, Somalia, Guinea, the Democratic Republic of Congo, Sierra Leone, Tanzania, Uganda), and in that of Serbia, Georgia and China, there are individual years in which a marginally higher number of girls as compared with boys can be discerned. Caution should, however, be exercised in evaluating the significance of this, because – as mentioned already – the statistics presented here do not include any unaccompanied asylum-seekers aged 16 or 17.

It also becomes clear that the age group of 14 and 15-year-olds is significantly more strongly represented than the group of 0 to 13-year-olds. The sole exception to this is the year 2003, when girls aged 0 to 13 outnumbered girls aged 14 or 15.

Table 6: Unaccompanied underage applicants making first-time applications for asylum up to and including those aged 15 (by most important countries of origin, age groups and gender) in 2002 – 2008 (in reverse chronological order)

Unaccompanied underage applicants for asylum in 2008					
Country of origin	Total	female		male	
		0-13	14-15	0-13	14-15
Iraq	93	14	5	13	61
Guinea	29	1	4	3	21
Afghanistan	27	2	-	7	18
Ethiopia	18	4	11	1	2
Eritrea	15	1	6	2	6
Somalia	11	-	3	2	6
Sri Lanka	11	-	1	7	3
India	8	-	-	2	6
Iran	8	1	1	2	4
Vietnam	8	2	2	1	3
Total (all countries of origin)	324	32	60	55	177

Unaccompanied underage applicants for asylum in 2007					
Country of origin	Total	female		male	
		0-13	14-15	0-13	14-15
Iraq	23	-	1	5	17
Ethiopia	17	-	15	1	1
Eritrea	14	-	8	2	4
Guinea	11	-	1	1	9
Afghanistan	9	-	-	2	7
Lebanon	9	3	-	1	5
Pakistan	7	-	-	-	7
Russian Federation	6	2	-	1	3
Serbia	6	3	1	1	1
Sri Lanka	6	1	2	1	2
Total (all countries of origin)	180	14	45	22	99

Unaccompanied underage applicants for asylum in 2006					
Country of origin	Total	female		male	
		0-13	14-15	0-13	14-15
Ethiopia	22	1	18	-	3
Vietnam	20	1	8	3	8
Afghanistan	15	3	1	6	5
Pakistan	13	5	3	4	1
Guinea	11	-	7	2	2
Iraq	11	1	3	-	7
Cambodia	8	1	2	2	3
Eritrea	7	-	3	1	3
Côte d'Ivoire	5	-	1	-	4
Russian Federation	5	-	1	1	3
Total (all countries of origin)	186	18	67	27	74

Unaccompanied underage applicants for asylum in 2005					
Country of origin	Total	female		male	
		0-13	14-15	0-13	14-15
Vietnam	91	17	12	13	49
Eritrea	28	6	13	3	6
Ethiopia	27	4	17	3	3
Afghanistan	19	2	2	6	9
Iran	14	2	2	-	10
Iraq	11	-	2	1	8
Guinea	10	1	4	-	5
Somalia	9	2	2	3	2
India	7	-	-	1	6
Angola	6	1	2	1	2
Total (all countries of origin)	331	40	78	44	169

Unaccompanied underage applicants for asylum in 2004					
Country of origin	Total	female		male	
		0-13	14-15	0-13	14-15
Vietnam	152	15	50	23	64
Ethiopia	53	8	31	3	11
Turkey	31	6	5	8	12
Eritrea	28	4	8	10	6
Afghanistan	23	2	5	2	14
Russian Federation	22	2	2	1	17
China	20	1	5	3	11
Nigeria	20	1	8	3	8
India	19	-	1	3	15
Pakistan	18	2	3	2	11
Total (all countries of origin)	636	67	172	95	302

Unaccompanied underage applicants for asylum in 2003					
Country of origin	Total	female		male	
		0-13	14-15	0-13	14-15
Vietnam	154	21	47	31	55
Serbia and Montenegro	93	46	3	41	3
Turkey	83	30	7	25	21
Iraq	64	11	8	25	20
Afghanistan	48	5	3	14	26
Angola	45	8	7	6	24
Russian Federation	43	9	2	19	13
Syria	36	7	6	19	4
Ethiopia	35	6	17	1	11
Eritrea	28	3	8	3	14
Total (all countries of origin)	977	197	156	261	363

Unaccompanied underage applicants for asylum in 2002					
Country of origin	Total	female		male	
		0-13	14-15	0-13	14-15
Afghanistan	138	13	9	35	81
Vietnam	83	13	24	18	28
Angola	76	21	21	13	21
Ethiopia	57	1	38	1	17
Iraq	55	4	4	9	38
Turkey	46	5	7	9	25
India	37	-	-	1	36
Syria	29	8	7	6	8
Iran	27	4	7	8	8
China	24	3	7	4	10
Total (all countries of origin)	873	117	196	146	414

Source: BAMF

4.1.4 Decisions taken by the BAMF

From the statistics relating to the decisions taken by the BAMF (see Tables 7 and 8), it emerges that unaccompanied minors are only recognised as being entitled to asylum in accordance with Article 16 a, Paragraph 1 of the Basic Constitutional Law in few individual instances. As already described in Chapter 2, they only rarely fulfil the criteria that constitute political persecution. And if they do, but have entered the country via a secure third-party state, their entitlement to asylum fails on account of the so-called “third country regulation” (Article 16 a, Paragraph 2, Clause 1 of the Basic Constitutional Law, § 26 a of the Asylum Procedure Act - see Chapter 3.1). What is, therefore, more frequent is the granting of protection as a refugee in accordance with § 60, Paragraph 1 of the Residence Act. Likewise, prohibitions on deportation in accordance with § 60, Paragraphs 2, 3, 5 or 7 of the Residence Act (subsidiary protection) are established more frequently.

Between 2002 and 2008, the number of rejections outweighed the number of decisions taken in favour of protection as a refugee or subsidiary protection. As of late, however, the number of instances of protection (“protection rate”) granted to unaccompanied underage asylum-seekers has increased noticeably. Whereas in 2002, only 3.5 percent of all unaccompanied underage applicants for asylum under the age of 16 were recognised as being entitled to asylum or were accorded protection from deportation or prohibitions on deportation, in 2006 the number of instances of protection reached 13.3 percent; in 2007 it was 10 percent, and in 2008 the protection rate even climbed as high as 51 percent. Taking into account all UNAMs – that is to say, including 16 and 17-year-olds – the protection rate in 2008 was 43.3 percent. It should however be borne in mind that even a rejection by the BAMF does not inevitably lead to the actual termination of the residence within Germany of an unaccompanied minor. Even after a rejection, the relevant Foreigners’ Authority can decide that there are obstacles to removal and, if appropriate, issue an exceptional leave to remain.

It should be kept in mind, when interpreting Tables 7 and 8, that the figures in the column “First-time applications for asylum” are not directly related with the figures in the column “Number of decisions”. The column “First-time applications for asylum” contains

the total figure of first-time applications for asylum lodged by UNAMs from a given country of origin during a given year. Under “Number of decisions”, on the other hand, the number of decisions taken in relation to a particular country of origin is set out. These decisions may also relate to applications for asylum lodged in an earlier year. For this reason, it is possible for the number of decisions taken in relation to a particular country of origin and in a particular year to be higher than the number of first-time applications for asylum in that particular year.

Table 7 describes all the decisions taken by the Federal Office in the year 2008 in respect of UNAMs, and therefore includes data relating to 16 and 17-year-olds. Three persons were recognised in 2008 as being entitled to asylum on the basis of the German Basic Constitutional Law, two of these being from the Russian Federation. It is, however, also interesting to discover that an overwhelming majority of the unaccompanied underage asylum-seekers from Iraq were awarded refugee status. Only seven out of the 91 UNAMs from Iraq were rejected. In respect of Vietnam as a country of origin, on the other hand, it will be seen that rejections were significantly in the majority.

Table 7: Decisions concerning first-time applications for asylum by unaccompanied underage applicants (including 16 and 17-year-olds) shown by principal countries of origin, weighted in accordance with the number of decisions per principal country of origin (2008)

Country of origin	Decisions concerning first-time applications by unaccompanied minors in 2008						
	First-time applications for asylum	Number of decisions	Recognition in accordance with Art. 16 a of the GG and family asylum	Protection as refugees in accordance with § 60, Para. 1 of the AufenthG	Subsidiary protection in accordance with § 60, Para. 2, 3, 5 or 7 of the AufenthG	Rejections	Formally settled *
Iraq	228	91	-	82	-	7	2
Vietnam	68	55	-	-	-	54	1
Guinea	48	16	-	-	2	14	-
Ethiopia	36	15	-	6	-	9	-
Afghanistan	61	8	-	4	2	1	1
Russian Federation	18	7	2	1	-	3	1
Eritrea	23	5	-	-	3	2	-
India	20	5	-	-	-	4	1
Sri Lanka	16	4	-	1	-	-	3
Algeria	17	4	-	-	1	3	-
All countries of origin	763	268	3	104	9	132	20

Source: BAMF

**“Formal settlement” can mean that an application for asylum has been withdrawn by the applicant, or it can mean that the applicant did not co-operate with the procedure – for example, by “disappearing”.

Table 8 contains the decisions taken during the years 2002 to 2007 in respect of applications for asylum by UNAMs up to and including the age of 15, because – as already mentioned – 16 and 17-year-olds UNAMs were not recorded as such prior to 2008. For the better understanding of these tables, it should also be borne in mind that the legal basis for the granting of protection from deportation (the establishment of refugee status) and for the

determination of prohibitions on deportation (subsidiary protection) changed in the year 2005 with the coming into force of the Immigration Act and the accompanying abolition of the Aliens' Act. Up to 2004, protection against deportation was accorded on the basis of § 51, Paragraph 1 of the Aliens' Act, but since 2005 it has been determined in accordance with § 60, Paragraph 1 of the Residence Act.²⁰ Up to 2004, prohibitions on deportation in accordance with § 60, Paragraphs 2, 3, 5 and 7 of the Residence Act were established under the name of so-called "obstacles to deportation" in accordance with § 53 of the Aliens' Act.

Countries of origin represented particularly strongly in the years dealt with in this table – given the overall significant downward tendency – were Vietnam, Iraq, Ethiopia, Afghanistan and Turkey. Up to 2005, Turkey was always one of the ten principal countries of origin. In 2003, more than ten percent of the applicants for asylum coming from Turkey were recognised as entitled to asylum.

There was also a strong downward tendency in the number of decisions taken in respect of applications for asylum from UNAMs coming from Vietnam. In 2003, decisions were taken concerning 168 applications for asylum from UNAMs coming from that country, while in 2007 Vietnam was no longer represented among the ten principal countries of origin. The protection rate was very low in respect of Vietnamese UNAMs during all the years from 2002 to 2007. Out of a total of 498 decisions concerning applications for asylum from Vietnamese UNAMs, 475 were rejected or formally settled. 23 UNAMs from Vietnam were accorded a prohibition on deportation. The requirements for the establishment of refugee status in accordance with § 3, Paragraphs 4 and 1 of the Asylum Procedure Act in conjunction with § 60, Paragraph 1 of the Residence Act, or for recognition as a person entitled to asylum in accordance with Art. 16 a, Paragraph 1 of the Basic Constitutional Act, were not established in a single case. The number of instances of protection granted to UNAMs from Ethiopia and Eritrea was also very low.

²⁰ The revision of § 60, Paragraph 1 of the Residence Act meant the full adoption of the conception of the refugee in accordance with the Convention and Protocol relating to the Status of Refugees of 28 July 1951 (the Geneva Convention on Refugees), to which the Qualification Directive (2004/83/EC) also refers. The presence of the relevant requirements will accordingly lead to the establishment of refugee status in accordance with § 3, Paragraphs 4 and 1 of the Asylum Procedure Act, the results of which in terms of the right of residence have been put on a par with those of the entitlement to asylum (cf. § 25, Paragraphs 1 and 2, and § 26, Paragraph 3 of the Residence Act).

Table 8: Decisions concerning first-time applications for asylum by unaccompanied underage applicants (leaving out 16 and 17-year-olds) shown by principal countries of origin, weighted in accordance with the number of decisions per principal country of origin (2002 - 2007)

Country of origin	Decisions concerning first-time applications by unaccompanied minors in 2007						
	First-time applications for asylum	Number of decisions	Recognition in accordance with Art. 16 a of the GG and family asylum	Protection as refugees in accordance with § 60, Para. 1 of the AufenthG	Subsidiary protection in accordance with § 60, Para. 2, 3, 5, 7 of the AufenthG	Rejections	Formally settled
Ethiopia	17	14	-	2	-	12	-
Afghanistan	9	10	-	-	7	2	1
Iraq	23	9	-	3	-	6	-
Guinea	11	8	-	1	-	7	-
Eritrea	14	4	-	-	-	4	-
Russian Federation	6	3	-	-	-	3	-
Serbia	6	3	-	-	-	1	2
Sri Lanka	6	2	1	-	-	-	1
Lebanon	9	1	-	-	-	-	1
Pakistan	7	1	-	-	-	1	-
All countries of origin	180	111	1	7	10	80	13

Country of origin	Decisions concerning first-time applications by unaccompanied minors in 2006						
	First-time applications for asylum	Number of decisions	Recognition in accordance with Art. 16 a of the GG and family asylum	Protection as refugees in accordance with § 60, Para. 1 of the AufenthG	Subsidiary protection in accordance with § 60, Para. 2, 3, 5, 7 of the AufenthG	Rejections	Formally settled
Ethiopia	22	17	-	-	-	17	-
Vietnam	20	14	-	-	1	6	7
Pakistan	13	14	-	-	-	14	-
Afghanistan	15	13	-	1	7	4	1
Eritrea	7	11	-	-	1	10	-
Syria	4	7	-	-	3	4	-
Somalia	5	6	-	2	1	2	1
Iraq	11	6	-	-	-	5	1
Côte d'Ivoire	5	5	-	-	-	5	-
Guinea	11	5	-	-	-	4	1
All countries of origin	186	157	-	5	16	119	17

Country of origin	Decisions concerning first-time applications by unaccompanied minors in 2005						
	First-time applications for asylum	Number of decisions	Recognition in accordance with Art. 16 a of the GG and family asylum	Protection as refugees in accordance with § 60, Para. 1 of the AufenthG	Subsidiary protection in accordance with § 60, Para. 2, 3, 5, 7 of the AufenthG	Rejections	Formally settled
Vietnam	91	91	-	-	-	39	52
Eritrea	28	26	-	1	-	24	1
Russian Federation	6	14	-	2	1	8	3
Ethiopia	27	14	-	-	-	14	-
Afghanistan	19	14	-	-	2	10	2
Guinea	10	13	-	-	-	12	1
Turkey	6	12	1	1	-	10	-
Iraq	11	10	-	-	-	9	1
Iran	14	10	1	-	-	9	-
Somalia	9	8	-	-	4	4	-
All countries of origin	331	319	2	4	12	225	76

Country of origin	Decisions concerning first-time applications by unaccompanied minors in 2004						
	First-time applications for asylum	Number of decisions	Recognition in accordance with Art. 16 a of the GG and family asylum	Protection as refugees in accordance with § 60, Para. 1 of the AufenthG	Subsidiary protection in accordance with § 60, Para. 2, 3, 5, 7 of the AufenthG	Rejections	Formally settled
Vietnam	152	157	-	-	20	137	-
Afghanistan	23	58	-	-	12	43	3
Ethiopia	53	42	-	-	4	38	-
Turkey	31	40	5	-	-	34	1
Iraq	9	29	-	-	1	27	1
Serbia and Montenegro	15	27	-	-	1	25	1
Eritrea	28	24	-	-	5	18	1
Angola	14	22	-	1	3	18	-
Pakistan	18	20	2	-	-	18	-
China	20	20	-	-	-	19	1
All countries of origin	636	690	12	2	64	593	19

Country of origin	Decisions concerning first-time applications by unaccompanied minors in 2003						
	First-time applications for asylum	Number of decisions	Recognition in accordance with Art. 16 a of the GG and family asylum	Protection as refugees in accordance with § 60, Para. 1 of the AufenthG	Subsidiary protection in accordance with § 60, Para. 2, 3, 5, 7 of the AufenthG	Rejections	Formally settled
Afghanistan	48	242	-	2	24	203	13
Vietnam	154	168	-	-	2	160	6
Turkey	83	93	10	2	2	74	5
Serbia and Montenegro	93	92	-	-	-	89	3
Angola	45	92	-	1	30	60	1
Ethiopia	35	69	-	-	14	54	1
Iraq	64	47	-	3	2	39	3
Syria	36	46	6	-	-	39	1
Iran	24	39	4	3	-	30	2
China	21	36	1	-	1	34	-
All countries of origin	977	1.367	22	12	102	1.174	57

Country of origin	First-time applications for asylum	Decisions concerning first-time applications by unaccompanied minors in 2002					
		Number of decisions	Recognition in accordance with Art. 16 a of the GG and family asylum	Protection as refugees in accordance with § 60, Para. 1 of the AufenthG	Subsidiary protection in accordance with § 60, Para. 2, 3, 5, 7 of the AufenthG	Rejections	Formally settled
Vietnam	83	68	-	-	-	66	2
Serbia and Montenegro	21	54	-	-	1	52	1
Syria	29	44	-	-	1	42	1
Iraq	55	37	1	3	1	31	1
Turkey	46	32	4	7	-	21	-
Angola	76	30	-	-	12	15	3
Ethiopia	57	22	-	-	11	10	1
China	24	16	-	-	-	14	2
Guinea	16	13	-	-	-	13	-
Russian Federation	20	11	-	-	1	10	-
All countries of origin	873	518	7	12	44	425	30

Source: BAMF

4.1.5 Procedures relating to the right of residence

In the case of unaccompanied minors who do not lodge any application for asylum, the relevant Foreigners' Authority is responsible for checking whether the requirements have been met for a prohibition on deportation in accordance with § 60, Paragraphs 2 to 5 or 7 of the Residence Act (an "isolated application" in the sense of § 60, Paragraphs 2 to 5 or 7 of the Residence Act). However, the decision of the Foreigners' Authority concerning the existence of a prohibition on deportation in accordance with § 60, Paragraph 2 to 5 or 7 of the Residence Act may, in accordance with § 72, Paragraph 2 of the Residence Act, only be taken after the prior involvement of the BAMF. This ensures that the particular expert knowledge of the Federal Office in respect of the circumstances in the respective countries of origin is integrated into the decision. The opinion of the Federal Office, as forwarded to the Foreigners' Authority, is an internal administrative matter and cannot be challenged on its own.

Sometimes, unaccompanied minors who have been apprehended in Germany are issued with an exceptional leave to remain by a Foreigners' Authority, pending such time as it may be decided, in the course of the clearing procedure, whether an application for asylum is to be lodged or whether an application for a prohibition on deportation to the Foreigners' Authority shall be filed.

4.2 The legal position of unaccompanied minors

Like adult migrants from third countries, unaccompanied minors require a residence title in order to stay within the Federal Territory (a visa, residence permit or settlement permit). The stay in Germany will also be legitimate if permitted for the purpose of carrying out an asylum procedure ("permission to reside"). Without any residence title or permission to reside, nationals of third-party countries are under an obligation to leave the country.

4.2.1 The legal position of minors during and following the asylum procedure

In accordance with § 55 of the Asylum Procedure Act, a foreign national who is seeking asylum will, for the purpose of the carrying out of the asylum procedure, receive a per-

mission to reside (Aufenthaltsgestattung). He or she will then be subject to the associated legal restrictions, such as to reside in the district of the Foreigners' Authority where the reception centre responsible for receiving the foreigner is located (cf. § 56 of the Asylum Procedure Act).

In the case of an incontrovertible recognition as a person entitled to asylum, the foreign national must be issued with a **residence permit** (Aufenthaltserlaubnis) in accordance with § 25, Paragraph 1 of the Residence Act. This also applies in the case of an incontrovertible awarding of refugee status in accordance with § 25, Paragraph 2 of the Residence Act.

A foreign national who has for three years been in possession of a residence permit in accordance with § 25, Paragraph 1 or 2 of the Residence Act must be issued with a **settlement permit** (Niederlassungserlaubnis) if the BAMF has advised that the requirements for a revocation or withdrawal of the decision under asylum law have not been met (§ 26, Paragraph 3 of the Residence Act). A settlement permit gives the subject the right to stay in the Federal Republic on a permanent basis.

If a prohibition on deportation prevails in accordance with § 60, Paragraph 2, 3, 5 or 7 of the Residence Act, the foreign national will be issued with a **residence permit for the purposes of subsidiary protection** (Aufenthaltserlaubnis zum subsidiären Schutz according to § 25, Paragraph 3 of the Residence Act).²¹

If, following the rejection of the application for asylum, there are any obstacles in law or in fact standing in the way of the subject's departure, and it cannot be expected that these obstacles will cease to apply within the foreseeable future, and these obstacles have not been caused by the foreign national himself or herself, then it is likewise possible for a residence permit to be issued; if, however, the termination of the subject's residence has

21 In respect of prohibitions on deportation (i.e. subsidiary protection), a distinction needs to be drawn between the granting of protection on the basis of European law and the granting of protection on the basis of national law. The granting of protection on the basis of European law covers the regulations contained in the Residence Act carrying Article 15 of Council Directive 2004/83/EC (the "Qualification Directive") over into German law, namely: § 60, Paragraph 2 (Article 15, letter b), § 60, Paragraph 3 (Article 15, letter a) and § 60, Paragraph 7, Clause 2 (Article 15, letter c), to the extent the prohibition on deportation is one related to the subject's country of origin. Nationally-based prohibitions on deportation, on the other hand, include § 60, Paragraph 5 and Paragraph 7, Clause 1 of the Residence Act, and in addition also § 60, Paragraphs 2, 3 and 7, Clause 2 of the Residence Act, if the prohibition on deportation is related not to the subject's country of origin, but to a third-party state.

If the requirements of § 60, Paragraphs 2, 3 or 7, Clause 2 of the Residence Act have been fulfilled, then the person concerned will as a matter of principle be entitled to have a residence permit issued in accordance with § 25, Paragraph 3, Clause 1 of the Residence Act. The provisions of the Directive do not allow any margin of discretion in terms of the issuing of the entitlement to remain. In the event of a nationally-based prohibition on deportation, on the other hand, it is only, in accordance with § 25, Paragraph 3 of the Residence Act, a general rule ("should") that the residence permit will be issued. Because of these further legal consequences, prohibitions on deportation on the basis of European law must always be given priority over nationally-based subsidiary protection in terms of the checking process.

In both instances, however, the residence permit may not be issued if one of the criteria for exclusion in accordance with § 25, Paragraph 3, Clause 2, letters a) to d) of the Residence Act has been fulfilled. On the other hand, the criteria for exclusion contained in § 25, Paragraph 3, Clause 2, Alternatives 1 and 2 of the Residence Act (if it is possible and reasonable to expect the subject to leave Germany for another country, or if the subject has repeatedly and grossly contravened his or her obligations to co-operate) may only be applied in the case of a prohibition on deportation on the basis of national law and not in the case of one on the basis of European law, because the Directive does not envisage any criteria for exclusion of this kind.

been suspended for eighteen months, then the residence permit must be issued (§ 25, Paragraph 5 of the Residence Act).

If a foreign national has been in possession of a residence permit in accordance with § 25, Paragraphs 3 or 5 of the Residence Act for a period of seven years, then it is possible, under certain conditions, for a settlement permit to be issued, with the time of the subject's residence during the asylum procedure being counted as a part of this period (§ 26, Paragraph 4 of the Residence Act). Children who have entered Germany prior to their 18th birthday can, on a discretionary basis, be given the opportunity in accordance with § 26, Paragraph 4, Clause 4 in conjunction with § 35 of the Residence Act to have their residence firmed up under the same conditions as apply in respect of children who are in possession of a residence permit for the purposes of family reunification.

If an entitlement to remain is not issued in accordance with the above, then it is still possible for a temporary suspension of removal to take place by means of the issuing of an **exceptional leave to remain**, the so-called "Duldung". (§ 60a, Paragraph 2 of the Residence Act). It is very frequent in Germany for individuals to have the status of such an exceptional leave to remain, including among unaccompanied minors. Since in past years the majority of unaccompanied underage applicants for asylum have been rejected, but departure from Germany is only enforced in instances in which it is possible to be certain that the minor in question will be looked after in his or her country of origin, many rejected UNAMs remain in Germany at least until they attain majority, and are given an exceptional leave to remain. In accordance with § 25, Paragraph 5 of the Residence Act, a foreign national who is subject to an enforceable obligation to leave the country should, however, be issued with a residence permit if his or her departure is, for reasons in law or in fact, impossible and it cannot be expected that the obstacles to his or her departure will cease to apply within the foreseeable future.²²

As compared with a residence permit or a settlement permit, the status of an exceptional leave to remain constitutes a considerable worsening in the legal situation of a minor. An exceptional leave to remain is issued for a period lasting six months at the most, and then extended if applicable. In respect of minors, in addition to the mental strain occasioned by the uncertainty of this legal status, the Duldung also has the disadvantage that – depending on the respective Federal State – access to any training or study position may be refused.

4.2.2 The legal position of minors in procedures related to the right of residence

In the procedure dealing with the right of residence, that is when no application for asylum is lodged, the following legal foundations for securing the residence of UNAMs within the Federal Territory come into consideration.

Subsidiary protection (§ 25, Paragraph 3 of the Residence Act):

Independently of any asylum procedure, it is also possible for obstacles to deporta-

²² This is, however, only possible if the foreign national is prevented from departing through no fault of his or her own.